

SCOTT N. SCHOOLS (SC SBN 9990)
 United States Attorney
 JOANN M. SWANSON (SBN 88143)
 Chief, Civil Division
 ABRAHAM A. SIMMONS (SBN 146400)
 Assistant United States Attorney

450 Golden Gate Avenue, 9th Floor
 San Francisco, California 94102-3495
 Telephone: (415) 436-7264
 Facsimile: (415) 436-6748
 Email: abraham.simmons@usdoj.gov

Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

| | | |
|--------------------------------------|---|--|
| LWANDA OKELLO, |) | No. C 06-07921 MHP |
| |) | Related to C 04-2528 MHP (EDL) |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | PROPOSED ORDER DENYING |
| CARI M. DOMINGUEZ, Chair, U.S. Equal |) | MOTION FOR DEFAULT |
| Employment Opportunity Commission, |) | |
| |) | |
| Defendant. |) | |

Pending before this Court is plaintiff's motion for summary judgment [Docket # 12] and for default [Docket # 28]. The motions are denied. Plaintiff presents no basis for summary judgment. In any event, this Court has stayed dispositive motions pending further settlement negotiations between the parties. The motion for summary judgment is denied without prejudice. Plaintiff may re-file the motion with proper supporting documents if settlement negotiations are unsuccessful.

Plaintiff also is not entitled to a default judgment. Default judgments are governed by Rule 55 of the Federal Rules of Civil Procedure. Rule 55 (a), Fed. R. Civ. P., states, "When a party against whom a judgment for affirmative relief is sought has *failed to plead*...and that fact is made to appear by affidavit...the clerk shall enter the party's default." Here, Defendant's Answer was filed and served prior to Plaintiff's October 2, 2007 Motion. Accordingly,

1 Defendant has not “failed to plead,” thus eliminating the factual prerequisite for the entry of an
2 order of default.

3 For these reasons, both plaintiff’s motions are denied.

4 IT IS SO ORDERED.

5 Dated: October 24, 2007



CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

Proposed Order Denying Motion for Default

Lwanda Okello v. Cari M. Dominguez, Chair, U.S. Equal Employment Opportunity Commission
C 04-2528 MHP Related to C 06-07921 MHP

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

- ☒ FIRST CLASS MAIL by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ PERSONAL SERVICE (BY MESSENGER)
- ☐ FEDERAL EXPRESS via Priority Overnight
- ☐ EMAIL
- ☐ FACSIMILE (FAX) Telephone No.: See Below

to the party(ies) addressed as follows:

Lwanda Okello, Pro Se
P.O. Box 51135
Seattle, WA 98115
PH: 206.679.5184

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this October 24, 2007 at San Francisco, California.

/s/
LILY HO-VUONG
Legal Assistant